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Authors	Kelly, Brendan D.;Drogin, Eric;McSherry, Bernadette;Donnelly, Mary
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University College Cork, Ireland
 Coláiste na hOllscoile Corcaigh

Editorial:**Mental health, mental capacity, ethics and the law in the context of Covid-19
(coronavirus)****Abstract**

The emergence of the Covid-19 (coronavirus) pandemic in late 2019 and early 2020 presented new and urgent challenges to mental health services and legislators around the world. This special issue of the *International Journal of Law and Psychiatry* explores mental health law, mental capacity law, and medical and legal ethics in the context of Covid-19. Papers are drawn from India, Australia, the United Kingdom, Ireland, Germany, Portugal and the United States. Together, these articles demonstrate the complexity of psychiatric and legal issues prompted by Covid-19 in terms of providing mental health care, protecting rights, exercising decision-making capacity and a range of other topics. While further work is needed in many of these areas, these papers provide a strong frame-work for addressing key issues and meeting the challenges that Covid-19 and, possibly, other outbreaks are likely to present in the future.

Keywords

Psychiatry

Mental health legislation

Human rights

Mental capacity

Covid-19

Coronavirus

Editorial

The emergence of the Covid-19 (coronavirus) pandemic in late 2019 and early 2020 presented new and urgent challenges to mental health services and legislators around the

world. For this special issue of the *International Journal of Law and Psychiatry*, we aimed to publish papers that examined the actual or potential impact of the global pandemic on mental health law, mental capacity law, and medical and legal ethics. The range of possible implications is broad and includes actual or proposed emergency legislation, negative ramifications for the human rights of people with mental illness or impaired mental capacity, the pandemic's potential impact on justice for these populations and various implications for legal and forensic practice in psychiatry.

There is strong research evidence that people with mental illness are at increased risk of poor health outcomes and experience limited access to healthcare. The law is a critical tool in achieving health justice. This special issue seeks to explore and elucidate the ways in which law is and should be used during a time of unprecedented crisis in global health. Papers are drawn from India, Australia, the United Kingdom, Ireland, Germany, Portugal and the United States.

Several papers in this issue focus on challenges and changes to national legislation prompted by Covid-19. Brown and colleagues (2020) examine the ethical, legal and practical challenge presented by the isolation of patients in psychiatric hospitals in the context of the pandemic, with a particular focus on English law. Ruck Keene (2020) explores 'the experience of a practising barrister in England and Wales grappling with the impact of Covid-19 upon the Mental Capacity Act 2005 ('MCA 2005') across a range of fields in the weeks after the world appeared to change in mid-March 2020'.

Stavert and McKay (2020) focus on Scottish mental health and capacity law in the pandemic; Farrell and Hann (2020) examine powers, procedures and protections under emergency legislation in Northern Ireland; and Vicary and colleagues (2020) explore coronavirus-related legislative changes for social care in the United Kingdom.

Elsewhere in Europe, Gather and colleagues (2020) provide an ethical evaluation of developments in Germany, exploring the conditions under which changes in the treatment of people under involuntary commitment are justified during the pandemic. Kelly (2020) examines the urgency, necessity and proportionality of emergency mental health legislation in Ireland. From Portugal and the United Kingdom, Moreira and Pinto da Costa (2020) outline the impact of the Covid-19 pandemic in the precipitation of intimate partner violence, while Gulati and Kelly (2020), in Ireland, focus on the role of psychiatry in relation to domestic violence against women during the pandemic.

In India, Nadkarni and colleagues (2020) explore dilemmas around ethics and rights in relation to forced alcohol abstinence during Covid-19. In Australia, Wilson (2020) discusses

the human rights of persons with mental and cognitive impairments subject to coercive powers during the pandemic. From the United States, Drogin (2020) describes and analyses forensic mental telehealth assessment (FMTA) in the context of Covid-19 and, finally, Freckelton (2020) discusses ‘fear, quackery, false representations and the law’ - issues that are especially acute at the present time.

As editors, we are delighted with the interest shown in this special issue and the diversity of papers published. Taken together, this collection demonstrates clearly the complexity of psychiatric and legal issues prompted by Covid-19, ranging from providing mental health care to protecting rights, from exercising decision-making capacity to ensuring the provision of accurate, reliable information to those who need it. While there will undoubtedly be further work on many of these topics, the papers collected here provide a strong framework for addressing key areas and meeting the challenges that Covid-19 continues to present to psychiatry and the law.

References

- Brown, C., Ruck Keene, A., Hooper, C. R., & O’Brien, A. (2020). Isolation of patients in psychiatric hospitals in the context of the COVID-19 pandemic: An ethical, legal, and practical challenge. *International Journal of Law and Psychiatry*, 71, 101572. <https://doi.org/10.1016/j.ijlp.2020.101572>.
- Drogin, E. Y. (2020). Forensic mental telehealth assessment (FMTA) in the context of COVID-19. *International Journal of Law and Psychiatry*, 71, 101595. <https://doi.org/10.1016/j.ijlp.2020.101595>.
- Farrell, A-M., & Hann, P. (2020). Mental health and capacity laws in Northern Ireland and the COVID-19 pandemic: Examining powers, procedures and protections under emergency legislation. *International Journal of Law and Psychiatry*, 71, 101602. <https://doi.org/10.1016/j.ijlp.2020.101602>.
- Freckelton, I. (2020). COVID-19: Fear, quackery, false representations and the law. *International Journal of Law and Psychiatry*, 72, 101611. <https://doi.org/10.1016/j.ijlp.2020.101611>.
- Gather, J., Juckel, G., Henking, T., Efke, S. A., Vollmann, J., & Scholten, M. (2020). Under which conditions are changes in the treatment of people under involuntary commitment justified during the COVID-19 pandemic? An ethical evaluation of current

- developments in Germany. *International Journal of Law and Psychiatry*, (accepted, in press).
- Gulati, G., & Kelly, B. D. (2020). Domestic violence against women and the COVID-19 pandemic: What is the role of psychiatry? *International Journal of Law and Psychiatry*, 71, 101594. <https://doi.org/10.1016/j.ijlp.2020.101594>.
- Kelly, B. D. (2020). Emergency mental health legislation in response to the Covid-19 (Coronavirus) pandemic in Ireland: Urgency, necessity and proportionality. *International Journal of Law and Psychiatry*, 70, 101564. <https://doi.org/10.1016/j.ijlp.2020.101564>.
- Moreira, D. N., & Pinto da Costa, M. (2020). The impact of the Covid-19 pandemic in the precipitation of intimate partner violence. *International Journal of Law and Psychiatry*, 71, 101606. <https://doi.org/10.1016/j.ijlp.2020.101606>.
- Nadkarni, A., Kapoor, A., & Pathare, S. (2020). COVID-19 and forced alcohol abstinence in India: The dilemmas around ethics and rights. *International Journal of Law and Psychiatry*, 71, 101579. <https://doi.org/10.1016/j.ijlp.2020.101579>.
- Ruck Keene, A. (2020). Capacity in the time of coronavirus. *International Journal of Law and Psychiatry*, 70, 101560. <https://doi.org/10.1016/j.ijlp.2020.101560>.
- Stavert, J., & McKay, C. (2020). Scottish mental health and capacity law: The normal, pandemic and ‘new normal’. *International Journal of Law and Psychiatry*, 71, 101593. <https://doi.org/10.1016/j.ijlp.2020.101593>.
- Vicary, S., Stone, K., McCusker, P., Davidson, G., & Spencer-Lane, T. (2020). “It’s about how much we can do, and not how little we can get away with”: Coronavirus-related legislative changes for social care in the United Kingdom. *International Journal of Law and Psychiatry*, 72, 101601. <https://doi.org/10.1016/j.ijlp.2020.101601>.
- Wilson, K. (2020). The COVID-19 pandemic and the human rights of persons with mental and cognitive impairments subject to coercive powers in Australia. *International Journal of Law and Psychiatry*, 101605. <https://doi.org/10.1016/j.ijlp.2020.101605>.

Brendan D. Kelly ^{a,*}, Eric Drogin ^b, Bernadette McSherry ^c, Mary Donnelly ^d

^a *Department of Psychiatry, Trinity College Dublin, Trinity Centre for Health Sciences, Tallaght University Hospital, Dublin 24, D24 NR0A, Ireland*

^b *Department of Psychiatry, Harvard Medical School, Boston, MA, USA*

^c *Melbourne Social Equity Institute, University of Melbourne, 201 Grattan Street, Carlton,
Vic 3056, Australia*

^d *Law School, University College Cork, Cork, Ireland*
E-mail address: brendan.kelly@tcd.ie (B. D. Kelly).